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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **LAURI MARIE BERNEY**  
26591 Via California  
14 Capistrano Beach, CA 92624  
15 **Registered Nurse License No. 390131**  
**Public Health Nurse Certificate No. 47593**

16 Respondent.

Case No. **2013- 33**

**A C C U S A T I O N**

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing,  
21 Department of Consumer Affairs.

22 2. On or about August 31, 1985, the Board of Registered Nursing issued Registered  
23 Nurse License Number 390131 to Lauri Marie Berney (Respondent). The Registered Nurse  
24 License will expire on October 31, 2012, unless renewed.

25 3. On or about June 11, 1991, the Board of Registered Nursing issued Public Health  
26 Nurse Certificate Number 47593 to Lauri Marie Berney (Respondent). The Public Health Nurse  
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will  
28 expire on October 31, 2012, unless renewed.

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1 conclusive evidence of the fact that the conviction occurred, but only of that fact,  
2 and the board may inquire into the circumstances surrounding the commission of  
3 the crime in order to fix the degree of discipline or to determine if the conviction  
is substantially related to the qualifications, functions, and duties of the licensee in  
question.

4 As used in this section, "license" includes "certificate," "permit,"  
5 "authority," and "registration."

6 10. Section 2761 of the Code states:

7 The board may take disciplinary action against a certified or licensed  
8 nurse or deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the  
10 following:

11 (f) Conviction of a felony or of any offense substantially related to the  
12 qualifications, functions, and duties of a registered nurse, in which event the  
record of the conviction shall be conclusive evidence thereof.

13 .....  
14 11. Section 2762 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the  
16 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct  
for a person licensed under this chapter to do any of the following:

17 (a) Obtain or possess in violation of law, or prescribe, or except as  
18 directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
himself or herself, or furnish or administer to another, any controlled substance as  
19 defined in Division 10 (commencing with Section 11000) of the Health and Safety  
Code or any dangerous drug or dangerous device as defined in Section 4022.

20 (b) Use any controlled substance as defined in Division 10 (commencing  
21 with Section 11000) of the Health and Safety Code, or any dangerous drug or  
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or  
22 in a manner dangerous or injurious to himself or herself, any other person, or the  
public or to the extent that such use impairs his or her ability to conduct with safety  
23 to the public the practice authorized by his or her license.

24 (c) Be convicted of a criminal offense involving the prescription,  
consumption, or self-administration of any of the substances described in  
25 subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
record pertaining to, the substances described in subdivision (a) of this section, in  
26 which event the record of the conviction is conclusive evidence thereof.

27 .....  
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12. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of *nolo contendere* made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

### REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

14. California Code of Regulations, title 16, section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

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1 (4) Whether the licensee has complied with any terms of parole,  
2 probation, restitution or any other sanctions lawfully imposed against the  
licensee.

3 (5) If applicable, evidence of expungement proceedings pursuant  
4 to Section 1203.4 of the Penal Code.

5 (6) Evidence, if any, of rehabilitation submitted by the licensee.

6 **COST RECOVERY**

7 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
8 the administrative law judge to direct a licensee found to have committed a violation or  
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
10 and enforcement of the case.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(February 14, 2002 Criminal Convictions For Battery and**

13 **Contempt Of Court On January 13, 2002)**

14 16. Respondent has subjected her licenses to disciplinary action under Code sections  
15 490 and 2761, subdivision (f), in that she was convicted of crimes that are substantially related to  
16 the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

17 a. On or about February 14, 2002, in a criminal proceeding entitled *The*  
18 *People of the State of California vs. Lauri Marie Berney aka Lauri Marie Lewis*, in Orange  
19 County Superior Court, Harbor Justice Center Laguna Hills Facility, case number 02SM00440,  
20 Respondent was convicted on her plea of guilty of violating Penal Code (PC) section 243  
21 subdivision (e)(1), battery against a former spouse, and PC section 166 subdivision (a)(4),  
22 contempt of court by disobeying a court order, misdemeanors. She was also charged with two  
23 additional counts of violation of PC section 166 subdivision (a)(4), contempt of court by  
24 disobeying court orders, misdemeanors, which were dismissed.

25 b. As a result of the convictions, Respondent was sentenced to informal  
26 probation for three years and ordered to pay a fine of \$540.00 and to perform 40 hours of  
27 community service and five days work with the California Department of Transportation.

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1           c.       The facts that led to the convictions are that since November 2001,  
2 Respondent did not comply with the court's order to allow her husband visitation every Sunday  
3 from 9 in the morning to 6 at night. On or about January 13, 2002, Respondent's ex-husband  
4 escorted by police, went to Respondent's residence in Laguna Niguel, California to pick up the  
5 couple's children. While Respondent's ex-husband was waiting outside her house, Respondent  
6 exited the front door, charged at her ex-husband, grabbing his arms and shoving him hard  
7 backwards. Respondent refused to transfer custody of the children who were, in fact, just inside  
8 the house and not at a sleepover as she claimed earlier.

9                               **SECOND CAUSE FOR DISCIPLINE**

10       **(September 26, 2006 Criminal Conviction For Obtaining Controlled Substance By Fraud**  
11                               **On March 23, 2005)**

12       17.       Respondent has subjected her licenses to disciplinary action under Code sections  
13 490 and 2761, subdivision (f), in that she was convicted of a crime that is substantially related to  
14 the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

15           a.       On or about September 26, 2006, in a criminal proceeding entitled *The*  
16 *People of the State of California vs. Lauri Marie Berney, aka Lauri Marie Lewis*, in Orange  
17 County Superior Court, Harbor Justice Center Laguna Hills Facility, case number 05SM03507,  
18 Respondent was convicted on her plea of guilty of violating (Health and Safety Code) HSC  
19 section 11173 subdivision (a), obtaining a controlled substance by fraud, a misdemeanor.

20           b.       As a result of the conviction, Respondent was sentenced to no probation,  
21 but ordered to pay \$100.00 in fines and \$20.00 in fees.

22           c.       The facts that led to the conviction are that on or about March 23, 2005, a  
23 pharmacist at a Wal-Mart Pharmacy in Laguna Niguel, California received a telephone order for  
24 a prescription for Respondent's mother-in-law. The pharmacist called the doctor listed on the  
25 prescription order to confirm the prescription. The doctor responded that the person listed on the  
26 prescription was not his patient. The pharmacist then apprised the store's loss prevention officers  
27 of the situation. When Respondent approached the store's counter to obtain the fraudulent  
28 prescription for her mother-in law, the pharmacist tipped off the loss prevention officers of

1 Respondent's presence. The loss prevention officers introduced themselves to Respondent who  
2 got agitated and attempted to leave immediately. The loss prevention officers held Respondent in  
3 detention until Orange County Sheriff's Deputies arrived and took her into custody.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(September 26, 2006 Criminal Convictions For Commercial Burglary and Obtaining**  
6 **Controlled Substance By Fraud On December 19, 2005)**

7 18. Respondent has subjected her licenses to disciplinary action under Code sections  
8 490 and 2761, subdivision (f), in that she was convicted of crimes that are substantially related to  
9 the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

10 a. On or about September 26, 2006, in a criminal proceeding entitled *The*  
11 *People of the State of California vs. Lauri Marie Berney, aka Lauri Marie Lewis*, in Orange  
12 County Superior Court, Harbor Justice Center Laguna Hills Facility, case number 06SM00564,  
13 Respondent was convicted on her plea of guilty of violating PC sections 459 and 460,  
14 subdivision (b), second degree commercial burglary, and HSC section 11173, subdivision (a),  
15 obtaining a controlled substance by fraud, misdemeanors.

16 b. As a result of the convictions, Respondent was sentenced to formal  
17 probation for three years and ordered to serve 120 days in Orange County Jail, consecutive to  
18 any other sentence, with credit for two days served. She was also ordered to attend, complete,  
19 and remain in a Drug and/or Alcohol Diversified Monitoring Drug Monitoring Patch Program  
20 for 15 months, to remain on Robocuff for six months, and to pay \$230.00 in fines and fees. On or  
21 about May 1, 2009, Respondent was found to be in violation of probation due to her arrest on  
22 March 16, 2009, detailed in paragraph 19, below. As a result of the violation, probation was  
23 terminated and on or about July 10, 2009, Respondent was ordered to pay \$1,720.48.

24 c. The facts that led to the convictions are that on or about December 16,  
25 2005, a pharmacy manager at Long's Drug Store in Mission Viejo, California received an alert  
26 from a doctor's office regarding a female who had called in a fraudulent prescription. On or about  
27 December 19, 2005, a female caller telephoned the pharmacy manager to fill a prescription from  
28 another doctor. Suspicious due to the previous alert received, the pharmacy manager contacted

1 the doctor who had purportedly issued the prescription and confirmed that the prescription for  
2 hydrocodone was fake. A pharmacy clerk received a follow-up call from a female caller to  
3 confirm whether the prescription was ready to be picked up. The pharmacy system flagged the  
4 prescription as a forgery and the pharmacy clerk contacted the Orange County Sheriff's  
5 Department. Respondent was apprehended while leaving the pharmacy after picking up the  
6 prescription.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(May 1, 2009 Criminal Convictions For Obtaining A Controlled Substance By Fraud and**  
9 **Evading While Driving Recklessly On March 16, 2009)**

10 19. Respondent has subjected her licenses to disciplinary action under sections 490  
11 and 2761, subdivision (f) of the Code in that Respondent was convicted of crimes that are  
12 substantially related to the qualifications, functions, and duties of a registered nurse. The  
13 circumstances are as follows:

14 a. On or about May 1, 2009, in a criminal proceeding entitled *The People of*  
15 *the State of California v. Lauri Marie Berney, aka Lauri Marie Lewis, aka Lauri M Berney*, in  
16 Orange County Superior Court, Harbor Justice Center Newport Beach Facility, case number  
17 09SF0277, Respondent was convicted on her plea of guilty of violating HSC section 11173,  
18 subdivision (a), obtaining a prescription by fraud, deceit, or misrepresentation, and Vehicle Code  
19 (VC) section 2800.2, evading a peace officer while driving recklessly, felonies. Respondent was  
20 also charged with violation of PC section 245 subdivision (a)(1), assault with a deadly weapon  
21 other than a firearm, and PC section 245 subdivision (c), assault with a weapon not a firearm on  
22 a firefighter or peace officer, felonies, which were dismissed pursuant to a Harvey Waiver.

23 b. As a result of the convictions, on or about May 1, 2009, Respondent was  
24 sentenced to two years in state prison for each of the two counts, to be served concurrently, with  
25 credit for 47 days served and 23 days for good conduct. Respondent was also ordered to pay  
26 \$400.00 in fines and \$100.00 in fees.

27 c. The facts that led to the convictions are that on or about March 16, 2009,  
28 Respondent attempted to obtain 20 pills of Norco 10/325, a controlled substance containing



1 acetaminophen and hydrocodone, by fraud and deceit at a CVS pharmacy in Ladera Ranch,  
2 California. On the same day, while driving a motor vehicle, Respondent drove recklessly while  
3 attempting to evade a pursuing police officer who attempted to stop her, while driving a  
4 distinctively marked police vehicle, which had both siren and red lights activated. Respondent  
5 almost collided with two pedestrians and a Sheriff's patrol unit, failed to stop for two stop signs  
6 and at least three red signals, and drove through a portion of a roadway closed for construction,  
7 into opposing traffic, and caused a collision during the pursuit.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Obtain A Controlled Substance In Violation Of Law)**

10 20. Respondent has subjected her licenses to disciplinary action under Code section  
11 2762, subdivision (a), in that on or about March 23, 2005; December 19, 2005; and March 16,  
12 2009, as described in paragraphs 17, 18, and 19, above, Respondent obtained controlled  
13 substances as defined in Division 10 of the Health and Safety Code, through the use of  
14 fraudulent prescriptions in violation of law.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Conviction for Obtaining Controlled Substance By Fraud)**

17 21. Respondent has subjected her licenses to disciplinary action under Code section  
18 2762, subdivision (c), in that on or about September 26, 2006 and May 1, 2009, as described in  
19 paragraphs 17, 18, and 19, above, Respondent was convicted of criminal offenses involving the  
20 falsification of prescriptions to obtain controlled substances.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
23 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 390131, issued to  
25 Lauri Marie Berney;

26 2. Revoking or suspending Public Health Nurse Certificate Number 47593, issued to  
27 Lauri Marie Berney;

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1           3.       Ordering Lauri Marie Berney to pay the Board of Registered Nursing the  
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 125.3;

4           4.       Taking such other and further action as deemed necessary and proper.  
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8 DATED:

*July 12, 2012*

*for Louise R. Bailey*

LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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